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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,181	03/12/2001	Gunter Knepe	HM-388 PCT	3009

20311 7590 10/01/2012
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EXAMINER

CHOI, STEPHEN

ART UNIT	PAPER NUMBER
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3724

NOTIFICATION DATE	DELIVERY MODE
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10/01/2012

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GUNTER KNEPPE, JOCHEN MUNKER,
HORST GRAFE, and JURGEN SEIDEL

Appeal 2011-004848
Application 09/744,181
Technology Center 3700

Before: KEN B. BARRETT, BENJAMIN D. M. WOOD, and
RICHARD E. RICE, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 11, 12, 14-17, 19, and 20. Claims 1-10 have been canceled. Claims 13, 18, and 21-23 have been withdrawn. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

THE INVENTION

The claims are directed to a method and device for guiding and supporting a thin sheet or metal strip. Claim 11, reproduced below, is illustrative of the claimed subject matter:

11. A method for guiding and supporting a thin sheet metal or metal strip (1) during transport across a conveying device (10) and through drums selected from the group consisting of a transport drum and a blade carrier drum during, before or after a cutting process carried out by shears (3), the method comprising the steps of:

guiding a liquid or gaseous medium under pressure through supply channels (4) in an interior of the drums (7, 8) to jet nozzles (5) at a periphery of the drums (7, 8) and producing jet bundles (2, 2') of the liquid or gaseous medium exiting from the jet nozzles (5), the drums (7, 8) being arranged so as not to touch;

loading at a slant or at a substantially perpendicular angle relative to the sheet metal or strip (1) at least an underside of the sheet metal or strip (1) with the jet bundles (2, 2') before support areas of the drums (7, 8), behind support areas of the drums (7, 8), before and behind support areas of the drums (7, 8) or as closely as possible adjacent to blades (6) provided on the blade carrier drums (8) and thereby supporting and guiding the sheet metal or strip (1) by impulse energy provided by the jet bundles (2, 2'), the blade carrier drums and the blades being part of the shears;

limiting the jet bundles (2, 2') oriented against the sheet metal or metal strip (1) to a limitable angular position of the drums (7, 8) using a valve (9).

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Read	US 1,015,836	Jan. 30, 1912
Obenshain	US 3,143,016	Aug. 4, 1964
Shearon	US 4,080,856	Mar. 28, 1978
Kobayashi	US 5,918,518	Jul. 6, 1999
DE '919	DE 944919	June 28, 1956

REJECTIONS

The Examiner made the following rejections:

Claims 11, 12, and 14-16 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Read in view of Kobayashi and Shearon.

Claim 17 stands rejected under 35 U.S.C § 103(a) as being unpatentable over Read, Kobayashi, Shearon, and DE '919.

Claims 19 and 20 stand rejected under 35 U.S.C § 103(a) as being unpatentable over DE '919 in view of Read and Shearon.

Claims 19 and 20 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Read, DE '919 or Obenshain, and Shearon.

ANALYSIS

Claims 11, 12, and 14-16 – Obviousness – Read, Kobayaski, and Shearon

All of the claims subject to this rejection require, *inter alia*, that “at least the underside” of a metal sheet or strip be sprayed with pressurized liquid or gas from jets located on transport or blade carrier drums, to “support[] and guide[]” the strip as it passes between the drums. The Examiner relies on Read to teach this limitation. Ans. 3. Appellants argue

that in Read, the sheet or “web” hangs vertically rather than horizontally and is not supported by the jets, since the jets spray the web from the left and the right sides. App. Br. 10. The Examiner responds that “the jets of Read [do] support and guide the workpiece as claimed since the web is supported and guided at least against any lateral movement.” Ans. 10.

We believe that Appellants have the better argument. While it seems evident that Read’s jets “guide” the web or sheet past the drums, that alone does not mean the jets also support the web. The claim requires both guiding and supporting, and “[i]n the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.” *CAE Screen Plates, Inc. v. Heinrich Fiedler GMBH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000). The claim itself suggests that supporting means that the jets must counteract or hold up against the effects of gravity, because it requires that “at least the underside” of the sheet must be sprayed.¹ We are of the view that Read’s jets, which spray the vertically hanging web W from the left and right sides (and not the “underside”), cannot reasonably be said to “support” the web. We therefore do not sustain this rejection.

Claim 17 – Obviousness – Read, Kobayashi, Shearon and DE ‘919

Because the Examiner does not rely on DE ‘919 to teach the missing limitation noted above, we do not sustain this rejection for the reasons given above.

¹ In this regard, one general definition of “to support” is “to hold up or serve as a foundation or prop for.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1256 (11th ed. 2003).

Claims 19 and 20 – DE ‘919, Read, and Shearon

Appellants argue claims 19 and 20 as a group. App. Br. 11-12. We select claim 19 as representative, with claim 20 standing or falling with claim 19. 37 C.F.R. § 41.37(c)(1)(vii) (2011). Claim 19 is directed to an apparatus that performs the method of claim 11. App. Br. 18.

Appellants first argue that none of the references specifically teach the function of supporting a metal strip or sheet with jets. App. Br. 11. The Examiner responds that the proposed combination “teaches all the structural limitations and is capable of performing the recited function.” Ans. 12. The Appellants have not shown that the Examiner erred in this regard. The absence of a disclosure relating to function does not defeat a finding of unpatentability since the recitation of a new intended use for an unpatentable product does not make a claim to that product patentable. *See In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Appellants have not provided evidence or persuasive argument demonstrating that the proposed combination is incapable of performing the recited function.

Appellants next argue that DE ‘919 does not teach “jet nozzles in the upper and lower drums both before and after the blades for lifting and supporting a metal strip.” App. Br. 11. This argument is also unavailing. The Examiner does not rely on DE ‘919 alone, but rather on DE ‘919 combined with Read, to teach jets arrayed on both drums on either side of the sheet. Appellants’ argument does not address this combination. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Finally, Appellants argue that “the metal strip of the present invention is transported by its own weight to the rollers of the transport device 10, whereas in [DE ‘919], the paper web, after cutting, must be transported between an upper and lower transport belt.” But claim 19 does not specifically require that the sheet material be transported “by its own weight” to the rollers, or exclude the possibility that the sheet or web be transported between an upper and lower transport belt. Accordingly, we find this argument to be not commensurate with the scope of claim 19. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability).

For the above reasons we sustain the Examiner’s rejection of claims 19 and 20 as obvious over DE ‘919 in view of Read and Shearon.

Claims 19 and 20 – Obviousness – Read, DE ‘919 or Obenshain, and Shearon

In addition to the arguments that Appellants raised with respect to the previous rejection of claims 19 and 20, Appellants argue that “Obenshain adds nothing to the teachings of Read and Shearon so as to arrive at the presently claimed invention.” The Examiner relied on Obenshain to teach the claimed conveying device. Ans. 9 (citing Obenshain Fig. 1). Appellants do not expressly dispute this finding and, in any event, we agree with the Examiner that Obenshain teaches a conveying device. We sustain this rejection.

DECISION

For the above reasons, the Examiner’s rejection of claims 11, 12, and 14-17 is reversed, and the Examiner’s rejection of claims 19 and 20 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED-IN-PART

JRG